

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FILEMON FLORES

*Plaintiff,*

v.

NATIONWIDE GENERAL  
INSURANCE COMPANY

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 4:19-cv-3288

**NOTICE OF REMOVAL**

Defendant Nationwide General Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Filemon Flores v. Nationwide General Insurance Company*; Cause No. 19-DCV-265005; In the 434<sup>th</sup> Judicial District of Fort Bend County, Texas.

**I.  
BACKGROUND**

Plaintiff Filemon Flores (hereinafter “Plaintiff”) initiated the present action by filing his Original Petition in Cause No. 19-DCV-265005; In the 434<sup>th</sup> Judicial District of Fort Bend County, Texas on July 30, 2019 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

1. Defendant appeared and answered on August 30, 2019, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

2. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated in **Exhibit A**. Pursuant to Local Rule 81, a full copy of the state court file has been requested and will be filed upon receipt.

3. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through his attorney of record, and to the clerk of the 434th Judicial District Court of Fort Bend County, Texas.

4. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

## **II. JURISDICTION**

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

### **A. Diversity of Parties**

6. Plaintiff is domiciled in Fort Bend County, Texas. *See Exhibit A, ¶ 2.* Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

7. Nationwide General Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Nationwide is a citizen of the State of Ohio.

8. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

**B. Amount in Controversy**

9. Plaintiff's Original Petition states that Plaintiff seeks "over \$150,000.00 but less than \$300,000.00." See Plaintiff's Original Petition, **Exhibit A**, ¶ 4. The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff's Original Petition.

10. Plaintiff seeks compensation for (1) actual damages, (2) policy benefits, (3) pre-judgment interest, (4) post-judgment interest, (5) consequential damages, (6) court costs, (7) attorneys' fees, (8) treble damages, (9) statutory interest, and (10) exemplary damages. See **Exhibit A**, ¶¶ 58. Plaintiff has alleged that Defendant's conduct was wrongful and done knowingly, entitling him to a trebling of actual damages under Texas Insurance Code Chapter 541 should Nationwide be found liable for the alleged conduct. See **Exhibit A**, ¶ 53; Tex. Ins. Code §§ 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.<sup>1</sup>

11. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. See **Exhibit A**. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

**III.  
CONCLUSION**

12. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

13. WHEREFORE, Defendant Nationwide General Insurance Company hereby provides notice that this action is duly removed.

---

<sup>1</sup> See *H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); see also *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

Respectfully submitted,

/s/ Patrick M. Kemp

Patrick M. Kemp  
Texas Bar No. 24043751  
Southern District No. 38513  
pkemp@smsm.com  
Segal McCambridge Singer & Mahoney  
100 Congress Avenue, Suite 800  
Austin, Texas 78701  
(512) 476-7834  
(512) 476-7832 – Facsimile

**ATTORNEY-IN-CHARGE FOR DEFENDANT  
NATIONWIDE GENERAL INSURANCE  
COMPANY**

OF COUNSEL:

Robert G. Wall  
Texas Bar No. 24072411  
Southern District No. 1117137  
rwall@smsm.com  
Segal McCambridge Singer and Mahoney  
100 Congress Ave., Suite 800  
Austin, Texas 78701  
(512) 476-7834  
(512) 476-7832 – Facsimile

Johali Muzaliwa  
Texas Bar No. 24092881  
Southern District Bar No. 2860965  
jmuzaliwa@smsm.com  
Segal McCambridge Singer & Mahoney  
5625 Cypress Creek Pkwy, Suite 600  
Houston, Texas 77069  
(713) 333-7600  
(713) 333-7601 – Facsimile

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served via CMRRR this the 30<sup>th</sup> day of August, 2019 to:

Shaun W. Hodge  
The Hodge Law Firm, PLLC  
Old Galveston Square Building  
2211 Strand, Suite 302  
Galveston, Texas 77550  
shodge@hodgefirm.com

# 9414 7266 9904 2137 9603 37

/s/ Patrick M. Kemp  
Patrick M. Kemp